401.

SUPREME COURT OF THE UNITED STATES.

No. 226.

THE SECOND MUNICIPALITY OF THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

WILLIAM J. MINOR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF LOUISIANA.

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[GIDEON, Print.]

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

WILLIAM J. MINOR
vs.
MUNICIPALITY NUMBER TWO. } 1698.

Pleas and proceedings before the honorable the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, being the December term, 1848, of said court, held at the city of New Orleans, in the district aforesaid, on the 4th day of April, A. D. 1849.

Be it remembered, that heretofore, to wit, on the 12th day of April, 1848, the plaintiff, William J. Minor, by his attorneys, Prentiss and Finney, filed in the clerk's office of said court a petition, in the words and figures following, to wit:

Petition.

To the honorable the judges of the United States circuit court for the district of Louisiana.

The petition of William J. Minor, who is a citizen and resident of the State of Mississippi, respectfully shows: That he is the true and lawful owner of one undivided fourth of that portion of the batture in front of the Second Municipality of New Orleans, which, as a part of a much larger portion of land, was ceded and released to Joseph L. Winter, Henry McCall, John Linton, and James C. Wilkins, by Jeanne Bordier, wife of Jean Matthieu Helaut Petit Bertrand Gravier, jun'r, and Jeanne Gravier, by an authentic act of mutual cession and compromise, executed by the said parties on the 12th of June, 1820, in the city of New Orleans, before Michel De Armas, a notary public for said city; which said portion of the batture will more fully appear by said authentic act, and a map or plan thereto annexed and identified therewith, both of which are hereunto annexed for reference for greater certainty.

That your petitioner is also the owner of one undivided fourth of the batture formed since the date of said act of mutual cession and compromise by alluvial formation from the Mississippi river, appurtenant to the property by said act ceded and released to the said Winter and others, by the said Madame Petit and others, by the authentic act aforesaid.

Your petitioner shows, that he acquired title to the said undivided fourth of said portion of the batture, together with all alluvial formation from the Mississippi river thereunto appurtenant and created since the date of said act of mutual cession and compromise, by purchase from James C. Wilkins on the 30th January, 1847, by his deed on that day acknowledged before John D. Elliott, commissioner for the State of

Louisiana in the State of Mississippi; which said deed was duly recorded in the office of register of conveyances for the city and parish of Orleans, on the first of February, 1847, and is hereunto annexed for greater certainty.

Your petitioner shows that the said James C. Wilkins acquired title to said undivided fourth by purchase, together with said Winter, McCall, and Linton, his co-purchasers, of a much larger portion of land, including the portion of which the undivided fourth is claimed in this suit, from Jean B. Poeyfarre by authentic act of date June 1, 1818, before Marc Lafitte, notary public of the city of New Orleans, of which a duly certified copy is hereunto annexed for greater certainty for reference. That said Poeyfarre acquired title to the said property by purchase from Bertrand Gravier, the lawful owner thereof, by deeds of date the 27th of February, 1789, and the 13th March, 1794, before Pierre Pedesclaux, notary public of the city of New Orleans; duly certified copies of which acts are hereunto annexed for reference for greater certainty. And that the said Bertrand Gravier acquired title to the said land, sold as aforesaid, by a regular chain running back to the sovereigns of the country.

Your petitioner further shows, that on the 12th day of June, 1820, a controversy then pending between the said Winter, McCall, and Linton, and Wilkins, of the one part, and the said Jeanne Bordier, wife of Jean M. H. Petit Bertrand Gravier, jun., and Jeanne Gravier, heirs of the Bertrand Gravier from whom Poeyfarre purchased, as aforesaid, on the other part, concerning the title and ownership of that part of the property purchased by Winter, McCall, Linton, and Wilkins, from Poeyfarre, as aforesaid, which lay between Tchaupitaulas street and the banks of the Mississippi river; the said contending parties executed a deed of mutual cession and compromise, by which the said Madame Petit Bertrand Gravier, jun., and Jeanne Gravier, ceded and released to the said Winter, McCall, Linton, and Wilkins, a portion of ground extending from Tchaupitaulas street to the river Mississippi, marked and delineated on a map or plan annexed to said deed; which said map and deed have been already referred to, as annexed to this petition, and which said portion of ground then and thus ceded and released to the said Winter, McCall, Linton, and Wilkins, is included between the lines on said map or plan connecting the letters C and D, and the letters M and N, beginning at Tchaupitaulas street, and to be extended to the river Mississippi, where it then was; and that thus the the said Winter, McCall, Linton, and Wilkins acquired, if they had not previously acquired, a full, clear, and perfect title to all that portion of ground, and with the right to all alluvial formations which might thereafter be formed appurtenant thereto, included between Tchaupitaulas street and the edge of the waters of the river Mississippi, and the lines C and D and M and N, to be extended to the edge of said river where it then was, and that thus your petitioner has acquired a full, clear, and perfect title to one undivided fourth of that portion of the batture aforesaid ceded and released as aforesaid by Madame Petit

and others of the one part, to Winter, McCall, Linton, and Wilkins of the other part, together with all alluvial formations since formed appurtenant thereto.

Your petitioner further shows, that the possession always accompanied the title thus traced back from your petitioner to the said Bertrand Gravier the elder, from the time of Poeyfarre's purchase as aforesaid, until long after the act of compromise aforesaid, between Jeanne Bordier, Madame Petit, and others of the one part, and Winter and others of the other part; but that recently the 2d Municipality of New Orleans, a corporation established by law, and domiciliated in the city of New Orleans, State of Louisiana has taken possession of the whole of the property of which your petitioner claims an undivided fourth as aforesaid, and retains possession and claims title to the whole thereof. Wherefore your petitioner prays that the 2d Municipality of New Orleans may be duly cited to answer this petition, and in due course of law that it be decreed that your petitioner has a good and valid title to an undivided fourth of all that portion of the batture in front of the said 2d Municipality of New Orleans, ceded and released by Jeanne Bordier, wife of Petit and others, on the 12th of June, 1820, to Winter and others of the other part, which lies between New Levee street and the edge of the river Mississippi, where it then was, and which is included between the lines C and D, and M and N, extended to the edge of the said river, where it then was, on the map annexed to the deed aforesaid between the said parties, together with all alluvial formation made since the date of said deed appurtenant to the property then ceded and released and described as aforesaid; that your petitioner's property be restored to his possession, for the general equitable relief and costs of suit.

PRENTISS & FINNEY,
Attorneys.

And afterwards, to wit, on the 19th June, 1848, the following entry was made on the minutes of the court:

WILLIAM J. MINOR
vs.
MUNICIPALITY No. 2. } No. 1698.

On motion of S. S. Prentiss, esq., of counsel for the plaintiff, and it appearing to the court that the process of citation issued in this case, has been duly served upon the defendant, the Municipality No. 2, and the delay allowed by law having expired and no answer filed, it is ordered that a judgment by default be, and the same is hereby entered in this case against the defendant, Municipality No. 2.

And afterwards, to wit, on the first of July, 1850, the defendants, by their counsel, Bullard and Roselius, filed in the clerk's office the following answer:

Answer.

MINOR
vs.
MUNICIPALITY No. 2.

In the United States circuit court.

The defendants, for answer to the plaintiff's petition, deny all the allegations therein contained, and especially that the plaintiff has any right or title to any part or portion of the land claimed by him.

For further answer they say, that the lot of land sued for forms a part of a public place of which these respondents have the administration; that by an act of compromise, dated the 20th of September, 1820, the claimants and actual possessors of the batture in front of the faubourg St. Mary, made an irrevocable dedication to public uses of the levee, the streets, and all the alluvial formation outside of the levee of which the lot now sued for formed a part; it being then the joint property of Wilkins and Linton and Winter and McCall. That the said Wilkins and Linton and Winter and McCall were parties to the act, and John Linton, who was the partner and agent of James C. Wilkins, the plaintiff's vendor, signed the said act, and gave the notes secured by mortgage in the name of the firm as required by the conditions of the compromise; that the said notes were afterwards paid by said partnership, and settled afterwards between the parties on the dissolution of the firm. That all the stipulations contained in that act of compromise and dedication have been fully carried out, executed, and ratified by all the parties, who have acquiesced in the public use of said property for more than twenty-five years, and up to the institution of this suit.

For further answer these respondents say, that the public has acquired by dedication and prescription the right of using and enjoying the lots or parcels of ground specified in said contract, having been in the peaceful and uninterrupted enjoyment of the same as a public place for more than twenty years, with the full knowledge and acquiescence of the said James C. Wilkins and of the plaintiff, his assignee.

They therefore pray for judgment in their favor, declaring the said lot to be part of a public place and legally under the administration of the defendants; and they pray for all such other and further aid, relief, and remedy and as the nature of their case may require and the law will permit; and they will ever pray, &c.

H. A. BULLARD &
C. ROSELIUS,
For defendants.

Endorsement on the foregoing.

We have no objection to this being filed, and notwithstanding default taken, and default set aside by consent.

July 1, 1848. PRENTISS & FINNEY.

And afterwards, to wit, on the 3d day of January, A. D. 1849, the following entry was made on the minutes:

W. J. MINOR
vs.
MUNICIPALITY No. 2. } 1698.

On motion of Prentiss and Finney, attorneys for plaintiffs, it is ordered that G. T. Dunbar be appointed to survey the land in controversy, and that he make and return into court a correct and duly certified map or plat of the same, and that said Dunbar be notified of this order.

And afterwards, on the 11th January, 1849, the following entry was made on the minutes of the court:

W. J. MINOR
vs.
MUNICIPALITY No. 2. } 1698.

This cause came on to-day for trial pursuant to assignment, S. S. Prentiss appearing for the plaintiff; when after some progress in the suit, the same was, on motion of S. S. Prentiss, continued until a further day.

And afterwards, on the 17th January, 1849, the following entry was made on the minutes:

W. J. MINOR
vs.
MUNICIPALITY No. 2. } 1698.

The trial of this cause having been resumed this day, S. S. Prentiss, esq., appearing for plaintiff, and C. Roselius and J. W. Frost for defendants, the evidence on part of the plaintiff was opened, and after proceedings, was continued until a further day.

And afterwards, on the 18th January, 1849, the following entry was made on the minutes:

W. J. MINOR
vs.
MUNICIPALITY No. 2. }

The trial of this case was this day resumed; S. S. Prentiss, esq., appearing for plaintiff, and H. A. Bullard for defendant. The evidence on part of the defendant was opened and closed. Whereupon, it is ordered that the same be, and is hereby continued until a further day.

And afterwards, on the 2d day of April, 1849, the following entry was made:

W. J. MINOR
vs.
MUNICIPALITY No. 2. } 1698.

The argument in this case was this day resumed; S. S. Prentiss, esq., for plaintiff, H. A. Bullard and C. Roselius for defendant. The

argument on part of plaintiff being closed, the court ordered that this case be, and the same is hereby, continued until to-morrow, the 3d inst., at 10 o'clock, a. m.

And afterwards, on the 3d April, 1849, the following entry was made on the minutes:

W. J. Minor
vs.
Municipality No. 2. } 1698.

The argument of counsel was this day resumed; said argument on part of the defendants proceeded until 3 o'clock, p. m. Whereupon, the court ordered that the same be continued until to-morrow, the 4th instant, at 10 o'clock, a. m.

And on the 4th April, 1849, the following entry was made on the minutes:

W. J. Minor
vs.
Municipality No. 2. } 1698.

The trial of this case was this day resumed, when after argument of counsel being closed, the case was submitted to the court, who took the same under advisement.

Judgment.

New Orleans, Saturday, 26th January, 1850. Court met pursuant to adjournment. Present, honorable J. McKinley, presiding judge; honorable Theo. H. McCaleb, district judge.

William J. Minor
vs.
Municipality No. 2. } 1698.

This cause came on to be heard, at the December term, 1848, of this court, before his honor Theo. H. McCaleb, then presiding, and was argued by counsel and taken under advisement; and now, at this term, the court having fully considered the same, and being satisfied that the law and the evidence are in favor of the plaintiff, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the plaintiff, William J. Minor, is the true and lawful owner of the lands sued for and described in the petition, to wit, one undivided fourth part of all that tract or portion of land constituting part of the batture in front of the Second Municipality of the city of New Orleans, which lies between Gravier and Poydras street, within New Levee street, on the one side, and the lines C D, and M N, as sketched and drawn on a map or plan annexed to, and forming part of a notarial act of mutual cession and compromise, passed before Michel de Armas, a notary public, of the city of New Orleans, between Jean Bordier, wife of Jean Matthieu, Helaut Petit Bertrand Gravier, jun'r, and Jean Gravier, of the one part; and Joseph S. Winter, Henry

McCall, John Linton, and James C. Wilkins of the other part; (which act is referred to in said petition, was executed and dated the twelfth day of June, A. D. 1820, and is now on file in this suit;) said lines C D, and M N, to be extended to the river Mississippi, on two other sides, and said Mississippi river on the fourth side, the Mississippi river forming the eastern boundary; New Levee street the western; the line M N extended to the said river the northern, and the line C D, also extended to the river, the southern boundaries of said tract; together with the right to all future alluvial accretions, and all other rights, privileges, and appurtenances, appertaining and belonging to a riparian estate. In consideration whereof it is further ordered, adjudged, and decreed, that the plaintiff, William J. Minor, do recover of the defendant, "Municipality No. Two," the said one undivided fourth part of said tract or parcel of land, lying and being within said lines and limits, to wit, New Levee street, the Mississippi river, and the lines C D, and M N, above described, extended to the river, together with all the alluvial and other riparian rights and privileges belonging and pertaining thereto. It is further ordered and adjudged, that plaintiff be put in possession of the lands herein adjudged to him, and that the defendant pay the costs of this suit.

Judgment rendered 26th January, 1850.

" signed 31st January, 1850.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Petition for writ of error, filed 11th Feb'y, 1850.

To the honorable the circuit court of the United States, for the fifth circuit and eastern district of Louisiana:

The petition of the Second Municipality of the city of New Orleans, respectfully represents, that they are informed and believe that there is error in the proceedings and judgment rendered against them in this honorable court, on the 31st January, 1850, in the suit of William J. Minor against this petitioner.

Wherefore petitioner prays that a writ of error be granted therein, returnable to the next term of the Supreme Court of the United States, on their giving bond and security, in the penal sum of ten thousand dollars, conditioned according to law, and that the same operate a supersedeas, and that all further proceedings herein be stayed.

ROSELIUS & BULLARD,
For defendants.

And on the 11th February, 1850, the following entry was made on the minutes:

WILLIAM J. MINOR
vs.
SECOND MUNICIPALITY of New Orleans. } No. 1698.

On motion of Roselius and Bullard, esq'rs, of counsel for defendants, and on filing their petition representing that said defendants felt ag-

grieved at the judgment rendered against them herein, on the 31st day of January, 1850, and praying a writ of error, to operate as a supersedeas, returnable to the next term of the Supreme Court of the United States, it is ordered that a writ of error be and the same is hereby allowed as prayed, to the said defendants, returnable to the next term of the Supreme Court, on their furnishing good and sufficient bond, in the penal sum of ten thousand dollars, conditioned as the law requires.

United States of America, circuit court of the United States, fifth circuit, and eastern district of Louisiana.

Clerk's office. I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit, and eastern district of Louisiana, do hereby certify, that the foregoing 17 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings in the case of William Minor vs. Municipality Number Two, No. 1698 of the docket, so far as the same now remain of record or on file in said court.

[L. S.] Witness my hand and the seal of said court, at the city of New Orleans, this third day of September, A. D. 1850.

J. W. GURLEY, *Clerk*.

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States, for the fifth circuit, and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this third day of September, A. D. 1850.

THEO. H. McCALEB. [SEAL.]

UNITED STATES OF AMERICA, *ss*.

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between William J. Minor and the Second Municipality of the city of New Orleans, a manifest error hath happened, to the great damage of the said Second Municipality of the city of New Orleans, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same,